

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8345 OF 2005

Eagle Flask Industries Ltd.
Talegaon Petitioner

versus

Bharatiya Kamgar Sena, Mumbai Respondent.

Shri D.J.Bhange for the petitioner
Shri Rahul L. Nerlekar for respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 23RD MARCH, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner challenges the order dated 3-10-2005 passed by the Industrial Court, Pune on an application at Exh.U-2 filed by the respondent trade union in complaint ULP NO. 333/05. The petitioner is a company incorporated under the Companies Act and was engaged in manufacture of Vacuum flasks and allied business, at Talegaon, District Pune. Sometime prior to the year 2003 the petitioner suffered losses and the financial position of the company had deteriorated to a considerable extent. The production activity of the company had come to a halt in September 2003 and

disputes between the petitioner and the workmen had cropped up. With a view to settle the claims of the workmen, meetings were arranged between the petitioner and the three trade unions, by the intervention of the labour minister and the labour secretary. In the said meeting it was agreed that the management and the unions should arrive at some formula and settle their claims, which would result in separation of the employees from the employer. In term of the said decision, two of the unions and the present petitioner executed a settlement. It may not be out of place to state at this juncture that there were 965 employees working in the company and out of 965 employees, the two trade unions who had signed the settlement had represented 614 workmen whereas the present respondent represented 149 employees. According to the settlement dated 28-9-2004 arrived at in between the petitioner and the other two unions, representing majority of the workmen, the amounts were to be paid by the petitioner to the workmen in a given proportion having regard to the amounts realised on sale of the property of the company. In execution of the settlement arrived at, the implemetation was made from 8-11-2004 by making payment from the sale proceeds of the plant and machinery which came to be sold on 26-5-2005 and certain payments were made to the workmen as agreed in the settlement.

3. The present respondent union filed a complaint on 2-9-2005 and therein claimed that the date of closure of the company as agreed in the settlement is incorrect. The date of closure as agreed in the settlement is 31-3-2003 whereas the respondent union has contended before the Industrial court that the date of closure should be 31-12-2004. In this facts situation, an application was moved before the Industrial court under section 30(2) of the MRTU & PULP Act seeking to restrain the present petitioner from disposing of its immovable property. The industrial court granted the relief prayed for by the respondent and agreed thereby the present petition has been filed contending that on account of the interim relief restraining the respondent from disposing of the property, the majority of the workmen are suffering as their payments cannot be made as agreed under the settlement on account of injunction operating against the petitioner restraining it from selling the properties. It is also contended that other creditors also cannot be paid their amounts due and receivable by them on account of stalemet caused due to passing of the interim order. The learned counsel has pointed out various decisions and emphatically contended that the majority of the workmen who have entered into settlement through their

respective union cannot be made to suffer on account of claim made by small number of employees disputing the terms of settlement.

4. The petitioner has placed on record a chart showing valuation report in regard to the immovable properties owned and possessed by the petitioner company, certified by Shri M.G.Bhat & Associates, a government valuer and chartered engineer. The valuation report is dated 8-8-2006. According to the valuation report there are five immovable properties owned and possessed by the petitioner, which are referred to from serial Nos. 1 to 5. The learned counsel for the petitioner has pointed out that, according to the claim made by the respondent, the total liability of the members of the respondent union would be in the sum of Rs. 3.5 crores as stated in the affidavit filed by the respondent. In his submission, if the arrangement could be made setting apart the sum of Rs. 3.5 crores for the members of the respondent union as claimed by it, then there is no justification to prevent the petitioner from disposing of other immovable properties. In all fairness the learned counsel for the petitioner submits that it shall not dispose of property at serial no. 3, which is valued at Rs. 1.75 crores. It is further submitted that if the petitioner is

permitted to sell other properties then the petitioner is ready and willing to deposit a sum of Rs. two crores received first with the Industrial court from the sale proceeds of the rest of the properties.

5. The learned counsel for the respondent admits that even if the entire claim of the respondent is allowed by the Industrial court, company's liability towards the payment of the same would not exceed 3.5 crores. He also does not dispute that for complying with the terms of the settlement, some of the properties could be permitted to be disposed of by the company. However he emphasis that a sum of Rs. 2 crores should be secured for the members of the respondent union. In this view of the matter the impugned order passed by the Industrial court needs to be modified appropriately so that on one hand the settlement can be implemented by sale of the other immovable properties and on the otherhand the amount which the respondent would be entitled, in case they succeed in the complaint pending before the Industrial court is secured. In my opinion the cause of justice would be advanced by permitting the petitioner to sell the properties at serial nos. 1,2,4 and 5 described in the valuation report dated 8-8-2006 and by restraining the petitioner from sale of the property at serial no.3. Besides the limited injunction in regard to the

property at serial no.3 in the valuation report could be continued so that the interest of members of the respondent union can also be safe guarded by further securing the deposit of Rs. two crores by the petitioner from and out of the sale proceeds which the petitioner will receive on sale of the other properties in the Industrial court. Hence I pass the following order.

i) The impugned order passed by the Industrial court is quashed and set aside.

ii) The petitioner is restrained from selling the property at serial no.3 described in the valuation report dated 8-8-2006 of which the estimated value is Rs. 1.75 crores. The petitioner shall also not create any encumbrance or charge over that property.

iii) The petitioner is permitted to sell or transfer the property at serial nos.1,2,4 and 5. On sale of the said properties or any of those properties, the petitioner shall first deposit a sum of Rs. two crores with the Industrial court to secure the claim of the members of the respondent union in the complaint pending with the Industrial court.

iv) The Industrial court shall permit the workmen to

withdraw their respective share on adjudication of the complaint after hearing the parties and in accordance with law.

v) The petitioner shall process and forward the Provident Fund form of the concerned workmen to the Provident Fund authorities treating the date of separation of the employees of the petitioner company as 31-3-2003 and this shall be without prejudice to the rights of the members of the respondent union.

vi) It is made clear that the deposit shall be made in the Industrial court within four weeks from the date of receipt of the amount by the petitioner.

Rule made absolute in the above terms.

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